



2017

CUE

COUNCIL ON THE
**UNDERGROUND
ECONOMY**



1 (877) 96-LABOR
mass.gov/cue



Council on the Underground Economy Annual Report 2017



Definitions of Abbreviations

ABCC:	Alcoholic Beverages Control Commission
AGO-FLD:	Office of the Attorney General - Fair Labor Division
CUE:	Council on the Underground Economy
DCAMM:	Division of Capital Asset Management and Maintenance
DIA:	Department of Industrial Accidents
DLS:	Department of Labor Standards
DOB:	Division of Banks
DOR:	Department of Revenue
DPH:	Department of Public Health and Safety
DPL:	Department of Professional Licensure
DUA:	Department of Unemployment Assistance
EOLWD:	Executive Office of Labor and Workforce Development
IFB:	Insurance Fraud Bureau
JTF:	Joint Enforcement Task Force on the Underground Economy
MCAD:	Massachusetts Commission Against Discrimination
MOBD:	Massachusetts Office of Business Development
MORI:	Massachusetts Office for Refugees and Immigrants
NLRB:	National Labor Relations Board
OPSI:	Office of Public Safety and Inspections
OSD:	Operational Services Division
SOC:	Office of the Secretary of the Commonwealth
US DOL:	United States Department of Labor

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For further information, please contact:

Executive Office of Labor and Workforce Development
- **Jessica Muradian**, Deputy Chief of Staff and
Director of Legislative Affairs and Policy
- **Pahola Deleon**, Policy Analyst

Phone: (877) 96-LABOR
Email: cuetips@mass.gov

The Council on the Underground Economy (CUE)

The CUE serves the business owners and taxpayers of the Commonwealth, by engaging in coordinated enforcement actions and investigations between state and federal agencies. By pursuing tips and engaging in outreach, the goal is to bring businesses into compliance with Massachusetts laws and tax requirements. The CUE is dedicated to the fair treatment of all Massachusetts workers and to creating a level playing field for all businesses based in or operating in our state.

The “underground economy” is a term that refers to those individuals and businesses conceal or misrepresent their employee population to avoid one or more of their employer responsibilities related to wages, payroll taxes, insurance, licensing, safety, or other regulatory requirements.

In March of 2008, Executive Order #499 was signed, which created the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF or Task Force), in order to coordinate the Commonwealth’s efforts to eliminate employer fraud and employee misclassification. The Executive Order ensured that member agencies addressed the underground economy cooperatively based on the following objectives:

- educate business owners and employees about applicable requirements;
- conduct joint, targeted investigations and enforcement actions;
- protect the health, safety, wages and benefit rights of workers;
- restore competitive equality for law-abiding businesses; and
- preserve taxpayer dollars and ensure proper payment of taxes.

Chapter 144 of the Acts of 2014—“An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms”— In addition to increasing the state’s minimum wage, this legislation codified the JTF into law, making the structure a permanent fixture under the Executive Office of Labor and Workforce Development. The act also changed the name of the JTF to the Council on the Underground Economy (CUE). Chapter 144 became effective on March 24, 2015.

CUE: Definitions

The “underground economy” is a term that refers to businesses and individuals that utilize schemes to conceal or misrepresent their employee population to avoid reporting substantial parts of their businesses as employers.

Cash wages: “Under the table” It is a common practice in some industries but illegal to pay your employees in cash to avoid payroll expenses associated with taxes and insurance.

Child labor: Child labor is work that harms children or keeps them from attending school. Maximum hours when children can work are clearly outlined as part of the statute.

Prevailing wage: The Massachusetts prevailing wage laws require that covered employees on public works projects be paid a minimum hourly rate set by the Department of Labor Standards (DLS). The prevailing wage laws apply to both union and non-union employers and employees. The Attorney General’s Office (AGO) enforces these laws.

Wage and/or hour violations: Unpaid minimum wages and/or unpaid overtime compensation owed to any employee(s). Employees who have filed complaints or provided information cannot be discriminated against or discharged on account of such activity. Effective January 1, 2017, \$11.00 per hour for non-tipped workers and \$3.75 per hour for service rate employees, yet the agricultural rate remains at \$8.00 per hour.

Licensure: Licensed, qualified individuals and businesses are to provide services to consumers, and by fair and consistent enforcement of the licensing laws and regulations.

Tax evasion violation: May include one or more of these related crimes:

- Failure to file a tax return;
- Failure to pay taxes

Unemployment Misclassification violation: Uses a three-prong test under which any individual performing services will be presumed to be an employee unless the alleged employer can prove all three of the following:

1. the worker has been and continues to be free from control and direction in performance of the service;
2. the work is performed either outside the usual course of business or outside all of the enterprise’s places of business; and
3. the worker is customarily engaged in an independently established business of the same nature as the service performed. M.G.L. c. 151A, § 2.

Workers’ compensation violation: Businesses do not provide workers’ compensation insurance for their employees.

Worker health and safety violation: Workers that have been exposed to hazardous circumstances, conditions, practices, or operations.

CUE: Reporting Agencies

The following agencies report to the CUE monthly on the corresponding issues:

Members	AGO-FLD	DPL	ABCC	DUA	DLS	IFB	DOR	DIA	OSHA	US DOL W/H	EBSA	OPSI	DFML
Cash wages	X			X						X			
Child labor	X									X			
Prevailing wage	X				X								
Wage and/or hour violations	X			X						X			
Licensure	X	X	X		X							X	
Misclassification	X			X	X	X							X
Tax evasion				X			X						X
Workers compensation								X					
Worker health and safety violations					X				X				
Benefits fraud											X		X

- Attorney General's Fair Labor Division (AGO-FLD)
- Division of Professional Licensure (DPL)
- Alcohol Beverage Control Commission (ABCC)
- Department of Unemployment Assistance (DUA)
- Department of Labor Standards (DLS)
- Insurance Fraud Bureau (IFB)
- Department of Revenue (DOR)
- Department of Industrial Accidents (DIA)
- Occupational Health and Safety Administration (OSHA)
- U.S. Department of Labor Wage and Hour (US DOL W/H)
- U.S. DOL Employee Benefits Security Administration (EBSA)
- Office of Public Safety and Inspections (OPSI)

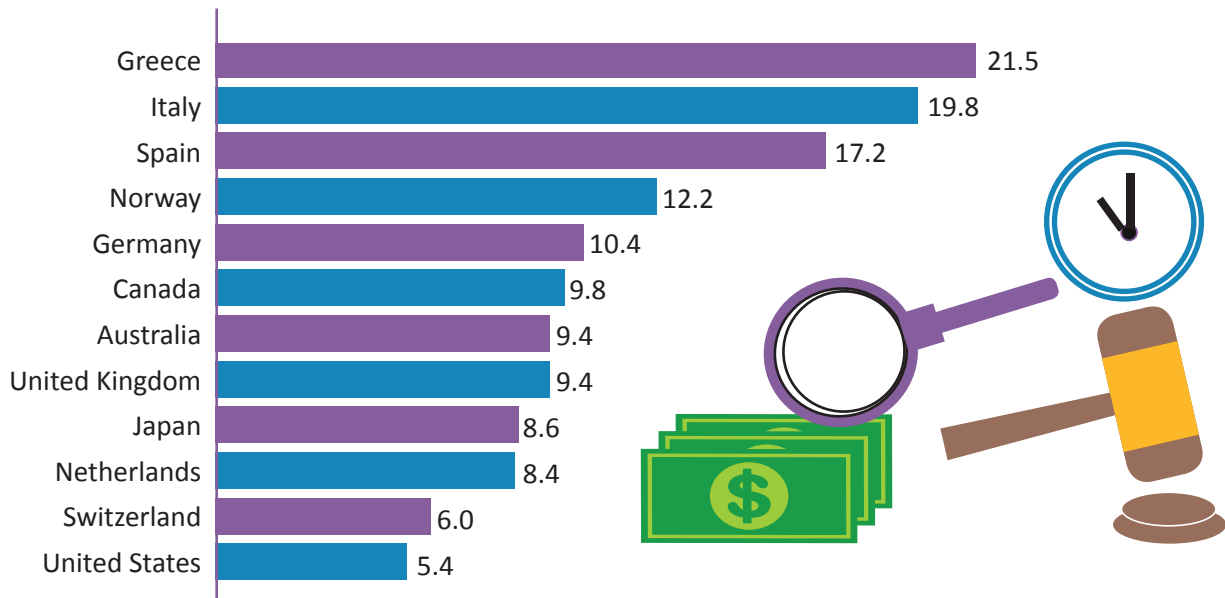
CUE: The Size of the Underground Economy

In 2016, it was estimated that the Underground Economy could account for \$45.7 billion of economic activity in Massachusetts alone (13% of the \$351.5 billion GDP)¹. Examples of underground economic activity include: underpayment of insurance, non-payment of taxes, improper licensure, underreporting number of employees and payment of wages by cash.

The graph below outlines the effect of the underground economy on the countries around the world.

Where shadow economies are well established

Shadow economy as a percentage of GDP in selected countries (2017)²



*Shadow economy is the part of an economy involving goods and services which are paid for in cash, not declared for tax and therefore, not actually part of the Gross domestic product (GDP).

Examples of Underground Economic Activity

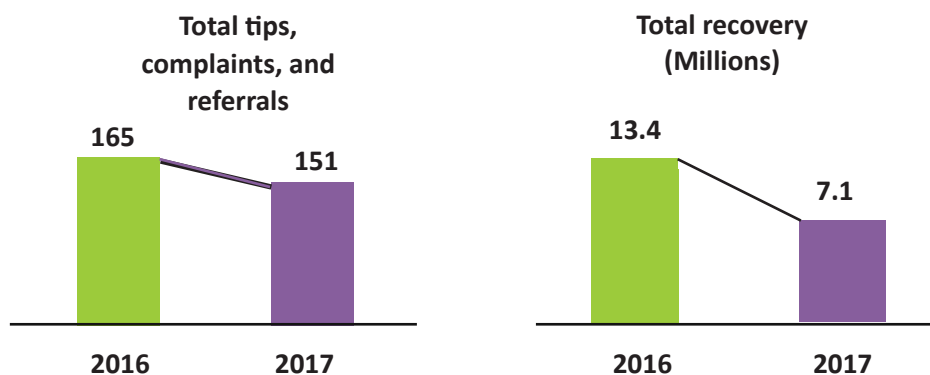
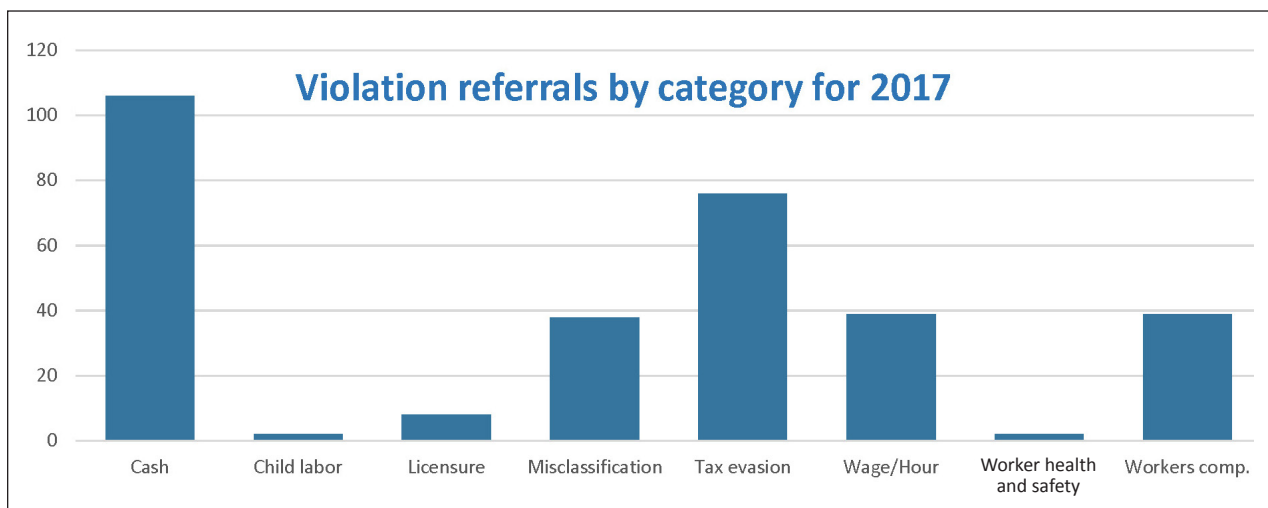
- Underpayment of insurance
- Nonpayment of taxes
- Improper licensure
- Misreporting number of employees
- Payment by cash wages
- Failure to file taxes

- 1 Size of Underground Economy in developed countries estimated at 13% of GDP. Schneider, Friedrich. "Shadow Economies and Corruption All Over the World: New Estimates for 145 Countries." Economics: The Open-Access, Open-Assessment E-Journal, July 2007, Volume 1, Number 2007-9, page 1.
- 2 Where shadow economies are well established. McCarthy, Niall. "The Countries with the Largest Shadow Economies." Forbes E-Journal, February 9, 2017. <https://www.forbes.com/sites/niallmccarthy/2017/02/09/where-the-worlds-shadow-economies-are-firmly-established-infographic/#21c84243742c>.

CUE: Results

The Investigative Subcommittee of the CUE meets monthly to review tips from the CUE tip line, complaints and referrals and then coordinates investigations. In 2017, the CUE directly received 151 total tips and complaints compared to 165 in 2016

Based on these tips and the investigative efforts of the CUE member agencies, the total recoveries in 2017 were \$7.04 million. The decrease in both referrals and recoveries may be a result of a stronger economy as well as an increase in the enforcement efforts, in previous years of the CUE's member agencies. In total, Massachusetts CUE operations have recovered \$35.84 million from non-compliant businesses between 2015 and 2017.



2017 total ordered/assessed: \$7,100,990.43

Joint Task Force and Council on the Underground Economy

to-date ordered/assessed: \$112,057,181.43 (March 2008 - December 2017)

2017 CUE Ordered/Assessed Funds by Department

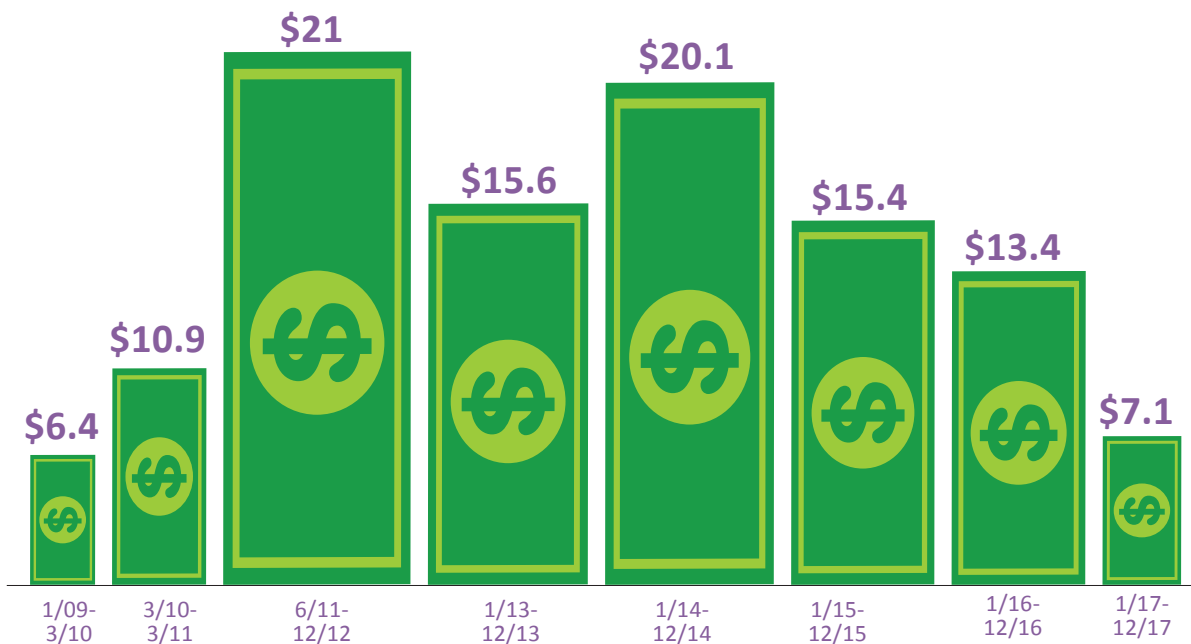
Agency	Financial impact	Industries
Attorney General's Fair Labor Division	\$1,039,968.43	Construction, Staffing, and Warehouse
Department of Unemployment Assistance	\$102,045	Transportation and Restaurants
Alcohol Beverages Control Commission	\$1,700,000	Restaurants
U.S. Department of Labor	\$2,167,545	Warehouse
U.S. Department of Labor/Audits	\$149,000	Restaurants and Salons
Department of Labor/OSHA	\$1,809,182	Staffing, Warehouse and Transportation
Divisions of Professional Licensure/OCABR	\$54,000	Construction
Department of Industrial Accidents	\$79,250	Transportation
Grand Total:	\$7,100,990.43	

CUE Revenue 2009-2017

In total Massachusetts CUE operations have assessed/ordered nearly \$110 million from non-compliant businesses between 2009 and 2017. These collections are the result of tips, complaints, and referrals given to the CUE Investigative Subcommittee.

Progression of recoveries for the CUE (millions)

Amounts include restitution, state taxes, unemployment contributions, fines, and penalties, collected through CUE efforts.



¹Prior CUE/JTF reports represented activities as follows:

- 2010 Annual Report: April 2009-March 2010
- 2011 Annual Report: April 2010-March 2011 and April 2011-June 2011
- 2012 Annual Report: July 2011-December 2011 and January 2012-December 2012
- Beginning with 2013, activities will be reported on a yearly cycle 2015 includes activities as the JTF and CUE

CUE: Noteworthy Accomplishments

Attorney General's Fair Labor Division (AGO-FLD)

New Hampshire Drywall Company Agrees to \$500,000 Settlement to Resolve Claims for Misclassified Workers.

A New Hampshire drywall company and its owner, agreed to a \$500,000 settlement to resolve allegations that they misclassified employees as independent contractors on multiple Massachusetts construction projects. The company will pay \$250,000, with the balance suspended pending its compliance with the terms of the settlement. This settlement agreement resolved allegations that the company and its owner violated the Massachusetts Consumer Protection Act and the Massachusetts False Claims Act. The act seeks to prohibit businesses from gaining an unfair competitive advantage over other companies in Massachusetts. The AG's Office sued the business in May 2014 after an investigation by AGO-FLD revealed a pattern of unfair competition through the unlawful misclassification of workers on multiple Massachusetts construction projects.

The AG's lawsuit alleged that this business used the practice of misclassifying workers to save costs associated with hiring the same workers as employees. As a result, this business may have been able to obtain an unfair cost advantage over its competitors. The lawsuit further alleged, the company was responsible for creating and submitting false records relating to the misclassification of workers employed on two public construction projects.

Reusable Bag Factory to Pay Nearly \$1.2 Million for Numerous Labor Violations and Retaliation Against Employees

A reusable bag factory company agreed to pay nearly \$1.2 million to resolve numerous allegations for wage and hour law violations and retaliation against employees. As a result, more than 550 affected workers will receive restitution. The settlements resolve allegations set forth, from a joint investigation by the AGO-FLD and the United States Department of Labor (USDOL). The investigation began in April 2016 after the matter was referred by the Council on the Underground Economy.

Division of Professional Licensure (DPL)

Consumer Fraud

The Division of Professional Licensure (DPL) is the parent agency for the Office of Consumer Affairs and Business Regulation (OCABR). DPL registers Home Improvement Contactor (HIC) contractors.

During 2017, a business collected consumer funds promising to obtain materials and provide home renovations for consumers. It was discovered that the business did not provide the promised services or turn over the appropriate materials that had been paid for in advance by consumers. As a result, the business lost their HIC Registration. The business also had their Contractor's License revoked.

Department Of Unemployment Assistance (DUA)

Employer Fraud

In April 2017, DUA received a referral from the Council on the Underground Economy to contact an agent from the Kansas City, Missouri Office of the Inspector General. The Program Integrity Department followed up and the agent provided information on a group of individuals in Arkansas who perpetrated a fictitious employer scheme. The scheme was to collect unemployment benefits across seventeen states. According to the agent, Massachusetts had been part of this scheme. The Program Integrity Division staff worked closely with the agent and it was determined that two fictitious employers had been set up with the DUA; 10 employees had active unemployment claims. The investigation revealed that the leader of the scheme was taking payments from individuals to include them as employees of two construction companies. The individuals with claims used their own social security numbers and personal information to open claims. The Program Integrity Division was able to identify that \$89,753 in fraudulent unemployment payments had been made. They were able to prevent an additional \$12,292 in overpayments.

Misclassified Workers

DUA identified 50 misclassified workers and \$111,225 in unreported wages because of CUE case referrals. The DUA Audit Department discovered the employers were underreporting new workers and or wages to DUA. The employer was misclassifying workers as independent contractors. These audits uncovered **50** new workers and approximately **\$111,225** in unreported wages.

As a result of these audits, these businesses began properly classifying employees and made payments for the unpaid Unemployment Insurance Trust Fund obligations they owed. These audits and subsequent compliance checks demonstrate that the collective authority of the CUE may results in fruitful investigations and encourages greater compliance.

U.S. Department of Labor's Occupational and Health Administration (OSHA)

A packaging company and 2 staffing companies reached agreements to correct hazards and enhance safety following a May 2016 incident in which an employee was injected with a flammable propellant gas.

OSHA concluded that this company, which packages aerosol containers, failed to implement the required safety procedures. These procedures included training on locking out the machine's power sources and hazard recognition.

Under the terms of the settlement agreement, the packaging company will pay \$150,000 in penalties, provide OSHA with documentation that all hazards have been corrected, retain a engineer to approve the design and installation of a safety interlock on the machine that injured the worker, retain a safety consultant to perform a comprehensive inspection of the plant and develop a workplace safety and health program.

OSHA also cited two temporary staffing agencies for supplying more than half of the workers at the packaging company. The staffing agencies agreed to pay \$12,471 in penalties, implement comprehensive safety and health measures at all host companies, and delineate safety responsibilities between both agencies and their host companies. In addition, they agreed to

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pay a \$12,222 penalty, attend safety and health training, implement a written safety and health management system, and hire an outside safety consultant.

The Division's investigation was part of a joint enforcement effort with the AGO's Fair Labor Division. The state's investigation identified alleged violations of state laws including failure to pay minimum wage and paystub violations, for which the company will pay more than \$564,000 in wages and penalties.

Department of Industrial Accidents

Auto Industry

Partnering state and federal agencies have an ongoing cooperative investigation into **Auto Auctions**. DIA then began an investigation into Auto Auctions. As of the end of 2017, this has led to **140 Stop Work Orders (SWO)** issued and **\$79,250** recovered. This investigation is still ongoing.

Appendix A: Massachusetts General Laws

Chapter 23 Section 25 – Council on the Underground Economy

Section 25. (a) There is hereby established a council on the underground economy.

The council shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (1) foster compliance with the law by educating business owners and employees about applicable requirements; (2) conduct targeted investigations and enforcement actions against violators; (3) protect the health, safety and benefit rights of workers; and (4) restore competitive equality for law-abiding businesses. For the purposes of this section, the term “underground economy” shall mean any individual or business that deals in cash or uses other means to conceal its true tax liability from government licensing, regulatory and taxing agencies, including, but not limited to, tax evasion or fraud, misclassification of employees, wage theft or the unreported payment of wages.

(b) The council shall consist of 17 members including: the secretary of labor and workforce development, or a designee, who shall serve as the chair; the director of the department of unemployment assistance, or a designee; the director of the department of industrial accidents, or a designee; the director of labor standards, or a designee; the commissioner of revenue, or a designee; the chief of the attorney general’s fair labor division, or a designee; the commissioner of public safety, or a designee; the director of professional licensure, or a designee; the executive director of the insurance fraud bureau, or a designee; and 8 persons appointed by the governor who represent government agencies. The council may create and appoint members to a subcommittee made up of members representing business, organized labor, not-for-profit organizations, government, the legislature, and any political subdivision thereof including municipal governments, to solicit input.

(c) The council shall:

- (1) facilitate timely information sharing among state agencies in order to advise or refer matters of potential investigative interest;
- (2) identify those industries and sectors where the underground economy and employee misclassification are most prevalent and target council members’ investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
- (3) assess existing investigative and enforcement methods, both in the commonwealth and in other jurisdictions, and develop and recommend strategies to improve those methods;
- (4) encourage businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints and enhancing the available mechanisms by which workers can report suspected violations;

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- (5) solicit the cooperation and participation of district attorneys and other relevant enforcement agencies, including the insurance fraud bureau, and establish procedures for referring cases to prosecuting authorities as appropriate;
 - (6) work cooperatively with employers, labor and community groups to diminish the size of the underground economy and reduce the number of employee misclassifications by, among other means, disseminating educational materials regarding the applicable laws, including the legal distinctions between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;
 - (7) work cooperatively with federal, state, and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including, but not limited, to immigrant workers;
 - (8) identify potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and
 - (9) consult with representatives of business and organized labor, members of the general court, community groups, and other agencies to discuss the activities of the council and its members and ways of improving its effectiveness.
- (d) The council shall file an annual report with the governor and the clerks of the house of representatives and senate summarizing the council's activities during the preceding year. The report shall, without limitation:
- (1) describe the council's efforts and accomplishments during the year;
 - (2) identify any administrative or legal barriers impeding the more effective operation of the council, including any barriers to information sharing or joint action;
 - (3) propose, after consultation with representatives of business and organized labor, members of the general court and other agencies, appropriate administrative, legislative, or regulatory changes to strengthen the council's operations and enforcement efforts and reduce or eliminate any barriers to those efforts; and
 - (4) identify successful preventative mechanisms for reducing the extent of the underground economy and employee misclassification, thereby reducing the need for greater enforcement. Reports of the council shall be made available on the webpage of the Executive Office of Labor and Workforce Development.

Appendix B: 2016 CUE Partner Agencies

Alcoholic Beverages Control Commission (ABCC) - Office of the Treasurer

The Alcoholic Beverages Control Commission regulates the alcoholic beverages industry in Massachusetts, directly licensing the statewide activities of liquor manufacturers, transporters, wholesalers and brokers. The ABCC also regulates interstate and international alcoholic beverage businesses by issuing certificates of compliance. The ABCC investigates applications for licenses, prosecutes violations of pertinent statutes and regulations and adjudicates disputes among members of the industry. **For more information, visit mass.gov/abcc.**

Attorney General (AG)

The Attorney General aims to set a level playing field for employers and employees throughout the Commonwealth. The Attorney General's specific jurisdiction to enforce the Commonwealth's wage and hour laws, both criminally and civilly, as well as its general jurisdiction to enforce criminal laws, including insurance and tax laws, larceny, and embezzlement, allows it to take a holistic approach to prosecuting cases involving the underground economy. Its broad jurisdiction enables it to work in partnership with fellow member agencies on the CUE in order to effectively investigate and prosecute cases, either civilly or criminally, as warranted. **For more information, visit mass.gov/ago.**

Office of the Attorney General's Fair Labor Division

The Office of Attorney General's Fair Labor Division enforces various laws that protect workers, including the prevailing wage, minimum wage, payment of wages, overtime, payroll record keeping, employee misclassification, tip pooling, child labor, Sunday and holiday premium pay laws. The Fair Labor Division also investigates allegations of violation of the State's public bidding laws in order to protect the integrity of the process of awarding public works construction contracts. In addition to prosecuting employers who fail to follow the Commonwealth's wage and hour laws, the Fair Labor Division works to protect employees from being exploited by an employer by educating both employers and employees about the law and employees' rights. **For more information, visit mass.gov/ago.**

Department of Industrial Accidents (DIA)

DIA's investigative unit works to ensure that businesses and industries are in compliance with the workers' compensation statute. One enforcement tool employed by the DIA is the issuance of immediate Stop Work Orders to violators, who are subject to fines and prosecution for failing to provide their employees with workers' compensation benefits. **For more information, visit mass.gov/dia.**

Department of Labor Standards (DLS)

The Department of Labor Standards (DLS) is responsible for the promotion and protection of workers' safety and health, wages and working conditions, and to support employers and workers in the utilization of apprenticeship as a workforce development tool. DLS protects workers through education and training, workplace safety and health consultation and assessment, occupational injury and illness data collection and analysis, and consistent and responsible administration of its statutes and regulations. DLS operates the following programs: Division of Apprentice Standards, Prevailing Wage Program, Minimum Wage Program, Employment, Placement, and Staffing Agency Program, On-site Consultation Program, Asbestos Safety Program, Deleading and Lead Safety Program, Occupational Lead Poisoning Registry, Massachusetts Workplace Safety and Health for Public Sector Program, Occupational Safety and Health Statistics Program, and Mine Safety and Health Program. **For more information, visit mass.gov/dols.**

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Department of Public Safety (DPS)

The Department of Public Safety is a licensing and regulatory agency whose mission is to reduce the risk to life and property by promoting safety in the design, construction, installation, inspection, operation, repair and alteration of boilers, pressure vessels, elevators, and buildings. The DPS licenses individuals in many areas, including elevator mechanics, construction supervisor licenses, fireman and engineering licenses, as well as licenses for sprinkler fitters, pipefitters and refrigeration technicians, and hoisting operators. In order to ensure compliance with the laws of the Commonwealth, the Department is committed to sharing its resources in a cooperative effort with other state agencies to ensure that workers in these industries are not exploited by business owners through misclassification or other means of skirting labor, tax and occupational safety laws. **For more information, visit mass.gov/eopss.**

Department of Revenue (DOR)

The mission of the Massachusetts Department of Revenue is to achieve maximum compliance with the tax, child support and municipal finance laws of the Commonwealth. The Department is dedicated to enforcing these laws in a fair, impartial and consistent manner by providing professional and courteous service to all its customers. The Department is also committed to the objectives of the Underground Economy Task Force to enforce employee classification laws through increased public awareness and enforcement. Misclassification of employees by employers has resulted in millions of dollars in lost tax revenue. Both with the Task Force and independently, DOR will be assigning more resources to employee misclassification and other withholding audits. **For more information, visit mass.gov/dor.**

Department of Unemployment Assistance (DUA)

The Department of Unemployment Assistance administers the unemployment insurance program in Massachusetts, providing temporary financial assistance to workers who lose their jobs through no fault of their own. Funding for unemployment insurance benefits comes from contributions paid by the state's employers; no deductions are made from workers' salaries and no taxpayer monies are utilized for this benefit. Employers pay quarterly contributions to the Massachusetts DUA. Protecting the integrity of the unemployment insurance program is a responsibility taken seriously by the DUA. Working with Joint Task Force partners, DUA continues to prevent, detect, investigate, and prosecute those who defraud or attempt to defraud the unemployment insurance system. This includes employers that evade paying unemployment insurance premiums by misclassifying their employees, either as independent contractors or without regard to any legal structure. **For more information, visit mass.gov/dua.**

Division of Capital Asset Management and Maintenance (DCAMM)

DCAMM serves the CUE by identifying DCAMM-certified contractors who have become non-compliant with other state agencies' regulations or requirements in an effort to bring the contractors back into compliance with state law or to decertify or debar such contractors when appropriate. DCAMM utilizes information obtained from various partner agencies as part of the certification process in order to make a final determination on whether the contractor meets the qualifications to be certified to perform public work. **For more information, visit mass.gov/dcam.**

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Division of Professional Licensure (DPL)

The Division of Professional Licensure, under the Office of Consumer Affairs and Business Regulation, oversees 31 boards of registration that license and regulate more than 360,000 licensees in some 50 trades and professions. DPL also oversees the State Racing Commission. DPL's mission is to protect the public health, safety, and welfare by licensing qualified individuals who provide services to consumers, and by fair enforcement of the statutes and regulations of the boards. Boards can revoke or suspend a license after investigation of serious complaints. DPL seeks to aggressively pursue unlicensed practices, working with participating Joint Task Force agencies and courts throughout the Commonwealth. **For more information, visit mass.gov/dpl.**

Insurance Fraud Bureau (IFB)

The Insurance Fraud Bureau of Massachusetts (IFB) was authorized by Massachusetts statute in 1990 to criminally investigate suspected fraudulent insurance transactions. The IFB became operational in 1991. The jurisdiction of the IFB was expanded effective January 1, 1992 to specifically include the criminal investigation of workers' compensation fraud, workers' compensation claim fraud, and workers' compensation premium evasion cases presented by misclassification of employees—schemes to affect experience modification or unreported or underreported payroll. Under existing law, anyone who is licensed under Massachusetts General Law (M.G.L.) Chapter 175, exempt from the licensing requirements of M.G.L. c. 175, or otherwise engaged in the business of insurance, and who becomes aware of suspected insurance fraud, is required to report it to the IFB. In addition to incarceration, the restitution orders on workers' compensation premium evasion cases total over \$63 million. Referrals can be made through the IFB web site at www.ifb.org or via the IFB hotline, 1-800-32-FRAUD.

For more information, visit ifb.org.

Occupational Health and Safety Administration (OSHA), U.S. Department of Labor

Congress created the Occupational Safety and Health Administration (OSHA) to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. OSHA is part of the United States Department of Labor. The administrator for OSHA is the Assistant Secretary of Labor for Occupational Safety and Health. OSHA's administrator answers to the Secretary of Labor, who is a member of the cabinet of the President of the United States. The OSH Act covers most private sector employers and their workers, in addition to some public sector employers and workers in the 50 states and certain territories and jurisdictions under federal authority. Those jurisdictions include the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Northern Mariana Islands, Wake Island, Johnston Island, and the Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act. **For more information, visit osha.gov.**

Appendix C: Common Interest Agreement

COMMON INTEREST AGREEMENT BETWEEN PARTICIPATING AGENCIES OF THE U.S. DEPARTMENT OF LABOR AND THE COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT, JOINT ENFORCEMENT TASK FORCE ON THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION/COUNCIL ON THE UNDERGROUND ECONOMY

This Agreement is made and entered into by and between participating agencies of the United States Department of Labor, specifically, the Wage and Hour Division, the Employee Benefits Security Administration, the Office of Federal Contract Compliance Programs, and the Occupational Safety and Health Administration (all represented by the Office of the Solicitor and hereinafter collectively referred to as the “Department”), and the Commonwealth of Massachusetts, Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF)¹ through the Secretary of the Executive Office of Labor and Workforce Development (EOLWD). The Department and the Commonwealth are collectively referred to as “the parties.”

With the specific and mutual goals of providing clear, accurate, and easy-to-access compliance information to employers, employees, and other stakeholders, and of sharing resources and enhancing enforcement by, as appropriate, conducting coordinated enforcement actions and sharing information consistent with applicable law, the parties agree to enter into this Agreement.

THEREFORE, IT IS MUTUALLY AGREED

THAT: **Purpose**

The parties recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern in the Commonwealth of Massachusetts. The parties enter into this Agreement to more effectively and efficiently communicate and cooperate on areas of common interest. This includes, but is not limited to the following: sharing of training materials; providing employers and employees with compliance assistance information; and conducting coordinated law enforcement investigations and sharing information, where appropriate and to the extent allowed by law, to protect the wages, retirement income security, equal employment opportunity, unemployment benefits, workers’ compensation entitlements, safety, and health of America’s workforce, and to ensure a level playing field for law-abiding businesses, and proper compliance with applicable tax and licensing laws.

¹In accordance with Chapter 144 of the Acts of 2014 *An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms* (M.G.L. Chapter 23 Section 25) on March 25th 2015, the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification will become the Council on the Underground Economy (CUE). The council, chaired by the Secretary of the Executive Office of Labor and Workforce Development and consisting of 17 members, shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (1) foster compliance with the law by educating business owners and employees about applicable requirements; (2) conduct targeted investigations and enforcement actions against violators; (3) protect the health, safety and benefit rights of workers; and (4) restore competitive equality for law-abiding businesses. For the purposes of this section, the term “underground economy” shall mean any individual or business that deals in cash or uses other means to conceal its true tax liability from government licensing, regulatory and taxing agencies, including, but not limited to, tax evasion or fraud, misclassification of employees, wage theft or the unreported payment of wages. See Appendix B. This agreement extends to the CUE and its named member agencies.

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Agency responsibilities

The Department is responsible for administering and enforcing a wide range of federal labor laws, including the Fair Labor Standards Act, the Family and Medical Leave Act, the Migrant and Seasonal Agricultural Worker Protection Act, worker protections provided in several temporary visa programs, the prevailing wage requirements of the Davis-Bacon and Related Acts, the Service Contract Act, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, numerous whistleblower provisions of federal statutes, Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Nothing in this agreement limits the Department's enforcement of these and other laws.

The Commonwealth is responsible for:

Executive Office of Labor and Workforce Development (EOLWD)/Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF)

- EOLWD is responsible for directing and overseeing the work of the Department of Unemployment Assistance, the Department of Industrial Accidents, the Department of Labor Standards, and the Department of Career Services. The Secretary of Labor and Workforce Development serves as the chair of JTF according to Massachusetts Executive Order 499 (E.O. 499).
- The Task Force consists of the following members or their designees: the Director of Labor, the Commissioner of Revenue, the Commissioner of the Department of Industrial Accidents, the Chief of the Attorney General's Fair Labor Division, the Commissioner of the Division of Occupational Safety, the Commissioner of the Department of Public Safety, the Director of the Division of Professional Licensure, the Director of Apprenticeship Training and the Director of the Department of Unemployment Assistance.
- According to E.O. 499, JTF coordinates joint efforts to combat the underground economy and employee misclassification, including efforts to: (a) foster compliance with the law by educating business owners and employees about applicable requirements; (b) conduct joint, targeted investigations and enforcement actions against violators; (c) protect the health, safety and benefit rights of workers; and (d) restore competitive equality for law-abiding businesses.
- According to E.O. 499, in fulfilling its mission, JTF:
 - o Facilitates timely information sharing between and among Task Force members, including through the establishment of protocols by which participating agencies will advise or refer to other agencies matters of potential investigative interest;
 - o Identifies those industries and sectors where the underground economy and employee misclassification are most prevalent and target Task Force members' investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
 - o Assesses existing investigative and enforcement methods, both in Massachusetts and in other jurisdictions, and develops and recommends strategies to improve those methods;
 - o Encourages businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints, and enhancing the available mechanisms by which workers can report suspected violations;

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- o Solicits the cooperation and participation of district attorneys and other relevant enforcement agencies, including the Insurance Fraud Bureau, and establishes procedures for referring cases to prosecuting authorities as appropriate; Works cooperatively with employers, labor, and community groups to diminish the size of the underground economy and reduce the number of employee misclassifications by, among other means, disseminating educational materials regarding the applicable laws, including the legal distinctions between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;
- o Works cooperatively with federal, commonwealth, and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including but not limited to immigrant workers;
- o Identifies potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and
- o Consults with representatives of business and organized labor, members of the General Court, community groups and other agencies concerning the activities of the Task Force and its members and ways of improving its effectiveness, including consideration of whether to establish an advisory panel under the Secretary of Labor and Workforce Development.

Contacts

- Each party will designate a primary contact person, and each agency will also designate a contact person, responsible for coordinating activities covered under this Agreement.
- Each party will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of this Agreement.

Enforcement

Where appropriate and to the extent allowable under law,

- Any or all of the parties and/or their participating agencies may conduct coordinated investigations of common interest periodically in the Commonwealth of Massachusetts, as mutually agreed upon.
- The parties and their participating agencies will make reasonable efforts to coordinate their respective enforcement activities and assist each other with enforcement, to the extent practicable.
- The parties and their participating agencies will make referrals of potential violations of each other's laws.

Effect of Agreement

- This Agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this Agreement obligates any participating agency to expend appropriations, enter into any other contract, or incur other obligations.

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- By entering into this Agreement, the parties do not imply an endorsement or promotion of the policies, programs, or services of the other.
- Nothing in this Agreement is intended to diminish or otherwise affect the authority of any participating agency to implement its respective statutory functions.
- This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or be binding upon the parties. This agreement is not intended to confer any right upon any private person or other third party.
- Nothing in this Agreement will be interpreted as limiting or superseding the participating agencies' normal operations. This agreement also does not limit or restrict the participating agencies from participating in similar activities or other arrangements with other entities.
- This agreement will be executed in full compliance with the Privacy Act of 1974, and any other applicable federal laws and laws of the Commonwealth.

Exchange of Information

- The Department and the Commonwealth endeavor to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitations that any such cooperation must be consistent with each party's own statutory obligations and enforcement efforts. It is the parties' view that sharing of information-including certain documents, factual materials, mental impressions, memoranda, interview reports, research, and other information, some of which may be privileged-in cases of common legal interest is to the parties' mutual benefit.
- Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
- Information that is otherwise discoverable and not privileged shall not become privileged simply because it was shared between any participating agency of the Department and any participating agency of the Commonwealth.
- Privileged information means information that may be exempt from disclosure to the public or other unauthorized persons under state and/or federal law, or otherwise may properly be withheld from disclosure. Such information may include but is not limited to: the identities of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; any employee statements in any of the participating agencies' enforcement files that were obtained under these conditions; information concerning investigative techniques or procedures that if disclosed could lessen investigative effectiveness; internal opinions and recommendations of federal or state personnel, including (but not limited to) investigators and supervisors; information or records covered by the attorney-client privilege and/or the attorney work-product privilege; personal information on living persons; tax and child support information; individually-identifiable health information; and confidential business information and trade secrets. Any physical material or other document containing such information should be clearly marked "privileged" before it is provided pursuant to this Agreement.
- Confidential Unemployment Compensation (UC) information, as defined in 20 CFR 603 .2(b), means any unemployment compensation information, as defined in 20 CFR 603 .2G), required to be kept confidential under 20 CFR 603.4 or its successor law or regulation.

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- Acknowledging that privileges and protections (including without limitation the investigative-files privilege, informant's privilege, attorney-client privilege, work-product doctrine, deliberative-process privilege, and confidentiality agreements or orders) may apply to certain shared information, the parties wish to pursue their common but separate interests without waiving any privilege or protection that may apply to that shared information.
- When privileged information is shared it shall be used and accessed only by authorized individuals and only for the limited purposes of carrying out activities pursuant to this
- Agreement as described herein. The information shall not be duplicated or further disclosed without the written authorization of the party that provided it, unless the information becomes public without violation of this Agreement or unless the information is required to be disclosed by Common order or other legal authority. The parties shall instruct all such authorized individuals about the confidentiality requirements under both applicable state and federal law and the Common Interest Agreement itself, and about the potential sanctions for unauthorized use, browsing, or disclosure of privileged information.
- In the event that there is a public proceeding, such as a trial, in which privileged information may be used or testimony of either party's employees sought, prompt notice shall be given to the other party to enable it to take such action, if any, that it deems appropriate under the circumstances.
- Subject to applicable requirements of law, the participating agencies shall adhere to the limitations placed on them in any requested dissemination of CJIS/NCIC data to noncriminal justice agencies.
- Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this Agreement, the party receiving such a request or subpoena shall take reasonable measures, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such information, and shall promptly notify the party providing such information that such a request or subpoena has been received, so that the party providing such information may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.
- Neither party shall have authority to waive any applicable privilege or doctrine on behalf of the other party, nor shall any waiver of an applicable privilege or doctrine by the conduct of one party be construed to apply to the other party.
- The requirements of this Agreement, as applied to all privileged information, shall survive all of the following: (a) withdrawal by any participating agency party from this Agreement; (b) termination of this Agreement, (c) final disposition of claims or actions whether by judgment, settlement, or other means of disposition.
- In addition to the requirements above, confidential unemployment compensation information may be exchanged only subject to the confidentiality requirements of 20 CFR 603.4, and any other applicable laws. In addition to the requirements above, the types of confidential information referenced in Appendix A may be exchanged only subject to the corresponding confidentiality requirements included in Appendix A.
- For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this Agreement remains the responsibility of the donor agency while in transit. The agencies agree to establish

a communication protocol for notifying each agency's designated contact person when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). An agency expecting to receive information will notify the donor agency if the information is not received as of the next business date following the agreed upon delivery date.

- For information security purposes, after an agency receives information from the donor agency, the donor agency retains no responsibility for any security incidents, inadvertent disclosure, or the physical and information technology safeguards in place for protecting that information by the agency that received it.
- However, in the event that the agency receiving the information experiences a security incident or disaster that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this Agreement, the agency experiencing the incident or disaster will send formal written notification to the donor agency's designated contact person within 3 days after detection of the incident or disaster. The written notification will describe the security incident or disaster in detail including what data exchanged pursuant to this Agreement may have been inadvertently disclosed.

Subject to the foregoing constraints:

- The parties and their participating agencies agree to exchange information on laws and regulations of common concern to the one another, as requested and to the extent practicable and allowable by law and policy.
- The parties and their participating agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent feasible and allowable by law and policy.

The parties and their participating agencies will exchange information (statistical data) on incidence of violations in specific industries and geographic areas, as requested and to the extent practicable and allowable by law and policy.

Resolution of Disagreements

- Disputes arising under this Agreement will be resolved informally by discussions between parties' Points of Contact, or other officials designated by a party.

Period of Agreement

- This Agreement becomes effective upon the signing by all signatories below, and will expire 3 years from the effective date. This Agreement may be modified in writing by mutual consent of all signatories or their designees. Any party or participating agency may withdraw from participation in this Agreement by giving thirty (30) days advance written notice prior to the date of intended withdrawal. Renewal of the Agreement may be accomplished by written agreement of all signatories or their designees.

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Appendix A of the Common Interest Agreement


- In accordance with M.G.L. c. 14, § 6 and DOR's Tax Confidentiality Statutes, M.G.L. c. 62C, §§ 21 and 21B:
 - o Confidential tax information must be safeguarded in accordance with the best practices contained in the National Institute of Standards and Technology (NIST) Special Publication 800-53 Revision 2, "Security Controls for Federal Information Systems", Annex 2, "Moderate-Impact Baseline" (NIST 800-53 (Moderate Level)) (this document can be found at: <http://csrc.nist.gov/publications/PubsSPs.html>) regarding the physical and technical security of the DOR Information.
 - o Confidential tax information in all files or systems must be maintained only for as long as it is relevant or useful for the purposes of this Agreement or until termination of this Agreement. The best practices contained in the NIST 800-88 Standard regarding the destruction of electronic or paper media and magnetic tapes; applicable state and federal statutes and regulations, including G.L. c. 931; and the Massachusetts Statewide Records Retention Schedule must be followed.
 - o Any person having access to the tax information must be informed of DOR's confidentiality requirements and the sanctions for unauthorized disclosure and sign DOR's confidentiality acknowledgement.
 - o Access to confidential information may not be released to any third party without DOR's written approval.
 - o DOR reserves the right to periodically review the use of the confidential tax information, including on-site audits and inspections, to reasonably determine and verify that the confidentiality of the DOR Information is maintained in accordance with the terms of this Agreement, and that the information is used only for authorized purposes.
 - o DOR may discontinue or suspend the provision of the tax information immediately if it determines that any term of this Agreement has been violated.
- In accordance with M.G.L. c.151:
 - o Privileged unemployment tax information shall be stored in a place physically secure from access by unauthorized persons.
 - o Privileged unemployment tax information maintained in electronic format must be stored so that unauthorized persons cannot obtain the information by any means.
 - o Privileged unemployment tax information shall be returned to the agency providing the information when no longer needed for the purposes of this Agreement or upon termination of this Agreement.
 - o Prior to accessing privileged unemployment tax information, parties shall agree to: (1) instruct all personnel having access to the privileged unemployment tax information about confidentiality requirements and the sanctions for unauthorized disclosure, (2) sign an acknowledgement that all personnel having access to the privileged unemployment tax information have been so instructed, and (3) allow with reasonable notice on-site inspections by the party providing the privileged unemployment tax information.

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This Agreement is effective as of the 17th day of November 2014.

United States Department of Labor,
Wage and Hour Division

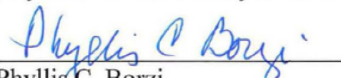
By: 
Dr. David Weil
Administrator

By: 
Mark Watson
Regional Administrator, WHD

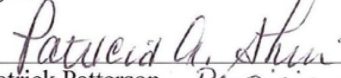
United States Department of Labor
Occupational Safety and Health Administration

By: 
Dr. David Michaels
Assistant Secretary

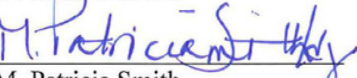
United States Department of Labor
Employee Benefits Security Administration

By: 
Phyllis C. Borzi
Assistant Secretary


United States Department of Labor
Office of Federal Contract Compliance
Programs

By: 
~~Patrick Patterson~~ *PATRICIA A. SHIV*
Deputy Director

United States Department of Labor
Office of the Solicitor

By: 
M. Patricia Smith
Solicitor of Labor

United States Department of Labor
Office of the Solicitor

By: 
Michael D. Felsen
Regional Solicitor

Commonwealth of Massachusetts,
Joint Enforcement Task Force on the
Underground Economy and Employee
Misclassification/Council on the Underground
Economy

By: 
Rachel Kaprielian
Secretary, Executive Office of Labor and
Workforce Development Chair, Joint Task
Force/Council